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(4)

09-647

IN THE

Supreme Court of the United States

ROBERT W. SHIMER,
VINCENT J. FIRTH
EQUITY FINANCIAL GROUP, LLC,
Petitioners,

COMMODITY FUTURES TRADING COMMISSION
Respondent

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Third Circuit

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APPENDIX SUPPLEMENT

Robert W. Shimer
Counsel of record
414 Allendale Way
Camp Hill, PA 17011
(717) 506-0645
Date: February 8, 2010

Unedited Full Sentence of CFTC Cited Exerpt From 1995 Federal Register

1995 Federal Register
(60 Fed. Reg. 38146 at 38159)

"This requirement for summary performance disclosure of non-major CTAs and investee pools reflects the fact that the trading of pool assets may be distributed among multiple CTAs and investee funds, such that a substantial portion of the pool's assets, all of the pool's assets, or even a multiple of the pool's assets, may effectively be allocated to CTAs or investee pools which are not "major" and about whom performance data and other information may not generally be presented."

Title 17: Commodity and Securities Exchanges
PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS
Subpart A—General Provisions, Definitions and Exemptions

17 C.F.R. 4.13(a)(3)(ii)

§ 4.13 Exemption from registration as a commodity pool operator. (a) A person is not required to register under the Act as a commodity pool operator if:

(3) For each pool for which the person claims exemption from registration under this paragraph (a)(3):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) At all times, the pool meets one or the other of the following tests *with respect to its commodity interest positions*, including positions in security futures products, whether entered into for *bona fide* hedging purposes or otherwise:

(A) The aggregate initial margin and premiums required to establish such positions, determined at the time the most recent position was established, will not

exceed 5 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in §190.01(x) of this chapter may be excluded in computing such 5 percent; or

(B) The aggregate net notional value of such positions, determined at the time the most recent position was established, does not exceed 100 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For the purpose of this paragraph:

(*1*) The term "notional value" shall be calculated for each such futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, and for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit; and

(*2*) The person may net contracts with the same underlying commodity across designated contract markets, registered derivatives transaction execution facilities and foreign boards of trade; and